IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Crl.Rev.Pet.No. 3108 of 2007()

CRA.211/2004 of I ADDL. SESSIONS COURT, KOLLAM
CC.1321/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

ANIL KUMAR, S/O.NARAYANAN, "UNNEES",
MURUNTHAL 'B' WARD, PERINAD P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.C.K.PRASAD
SRI.ABHILASH S.FRANCIS

RESPONDENTS: RESPONDENTS/COMPLAINANT AND THE STATE

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1. V.PRASANNAKUMAR, S/O.VISWANATHAN,
THEKKEPLAVILA VEEDU, ASHTAMUDI P.O.
KOLLAM DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3108 of 2007

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Dated: 21-08-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1321 of 2001 on the file of the J.F.C.M-I, Kollam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary

evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Petitioner is stated to be in custody since 25-07-2007. The cheque amount is Rs. 2,00,000/- (Rupees two lakhs only). I am inclined to reduce the sentence to the one already undergone by the petitioner, provided, he pays the cheque amount of Rs. 2,00,000/- (Rupees two lakhs only) as compensation to the complainant under Sec. 357 (3) within six months from today. Accordingly, the petitioner is directed to be released from custody in this case unless his continued detention is warranted in connection with any other case against him. His release shall be with a liability to pay a sum of Rs. 2,00,000/- (Rupees two lakhs only) as compensation to the first respondent/complainant within six months from today, failing which he shall suffer simple imprisonment for four months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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